

Legal Alert

Supreme Court of Poland rules on cooperation between employers and trade unions in individual matters concerning employees

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A trade union's refusal to provide an employer a list of employees subject to the trade union's protection, in order to safeguard their personal data, does not release the employer from the obligation to consult with the trade union on the intended termination of the employment contract of an individual employee.

Under Art. 30 sec. 2¹ of the Trade Unions Act of 23 May 1991, in individual matters concerning employees if the employer is required to cooperate with a trade union (such as informing the trade union of planned termination of employment upon notice), it needs to check with the trade union if given employees are covered by the trade union's protection. If the information is not provided within 5 days, the employer is released from the obligation to cooperate with the trade union on matters concerning such employees.

Under Art. 23 sec.1 item 2 of the Personal Data Protection Act of 29 August 1997, processing of personal data is legitimate if it is necessary to exercise a right or comply with an obligation specified by law. Further, Art. 26 sec. 1 item 2 of the act requires a personal data controller to ensure that the data are collected for a specific, lawful purpose.

Employers often request trade unions to provide a list of all employees protected by the unions, frequently without providing the reasons for the request. Having such a list, the employer would not be required to inform the trade union about its intention to terminate an employee if the employee is not included in the trade union's list.

Trade unions have usually refused to provide such lists, often citing the obligation to safeguard the personal data of the employees.

This led to a discrepancy in recent rulings of the Supreme Court of Poland on the consequences of a trade union's refusal to provide such information.

- On 24 January 2012 (Case No. III PZP 7/11), the Supreme Court ruled that a trade union's refusal to provide the employer with a list of employees under its protection, citing the obligation to comply with data protection regulations, does not release the employer from the obligation to cooperate with the trade union (e.g. to inform the trade union about intended termination of an individual employee).
- However, in a ruling dated 14 June 2012 (Case No. I PK 231/11), the Supreme Court decided that a trade union's refusal to provide a list of all employees under its protection, even if justified by the obligation to comply with data protection regulations, does release the employer from the obligation to cooperate with the trade union in this respect.

Supreme Court's latest ruling

On 21 November 2012 (Case No. III PZP 6/12), the Supreme Court (bench of 7 justices) ruled that a trade union's refusal to provide a list of all protected employees, requested by the employer without justified cause, does not release the employer from the obligation to cooperate with a trade union in individual employment matters. According to the reasons for the ruling announced at the hearing, an employer may legally gather information only regarding employees who are



subject to its planned individual action (e.g. termination). The employer may not request a list of all protected employees, as this would lead to unlawful processing of the personal data of the employees who are not subject to its planned action.

The Supreme Court's interpretation of the law is disadvantageous for employers. In view of the ruling of 21 November 2012, a trade union may lawfully refuse to provide a list of all employees under its protection, and the employer will still be required to check with the trade union if the specific employees are protected before the redundancies begin. Such employees may then be warned of the employer's intentions (e.g. to lay them off) and may attempt to delay the redundancies, for example by taking extended sick leave (as in general employees may not be terminated during sick leave).

Adam Nierzwicki

+48 22 50 50 751

[E-mail](#) ▶



Michał Hady

+48 22 50 50 798

[E-mail](#) ▶

